

# **PRINCIPLES OF INTERNATIONAL TREATIES IN LAW OF SIYAR**

**By**

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## **Abstract**

In the contemporary state of world affairs the international treaties has assumed immense practical importance. The globalization has opened unprecedented avenues of cooperation as well as of conflict. The demand of steady and smooth intercourse between states, to settle question in dispute without having to go to war, to arrange the consequences of failure after a war had been fought and to strike alliances have added to the significance of international treaties. And need arises to get familiar to the principles of conducting international treaties and Muslims are aware of this dire need since their existence. Thus study of these rules and regulations under the umbrella of law of Siyar through which international treaties can be concluded is focused in this study.

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The study aimed at to present Islamic laws for conducting treaties and what vital role treaties can be played in maintaining peace. It begins with brief examination of concept of treaties, its nomenclatures, kinds and sanctity. The main concentration of next discussion is preliminaries to treaties and Islamic laws regarding negotiation and diplomacy. An attempt is made to highlight the significance of negotiation and diplomacy for maintaining peace and concluding treaties. The 3<sup>rd</sup> part contains discussion regarding effects of treaties on individuals and states or rulers. It elaborates effects on Dihīmiy and Mūsta'mins. The last part explores those principles through which treaties can be terminated and circumstances in which treaties have expired. Suggestions for maintaining peace and implementing islamaic laws of treaties have been given in the conclusion.

## **Introduction**

Conclusion of International treaties is the most effective method for the attainment of common interests of different states. From the early age human beings are engaged in this activity. Muslims not only take their historical responsibility in this regard but they also contributed in making it in accordance with requirement of modern age.

This study is an attempt to analyze principles of treaties, which are included in the domain of Siyar laws, on the bases of original sources of Islamic law. The

prime focus of attention in this study is the nations' rules relating to International treaties. What does Law of Siyar and treaties mean? How Islamic law of Siyar sanctioned it? What are principles of Islam regarding preliminaries, effects and termination of treaties? These and other questions related to these are tried to be answered in this study.

The study begins with a brief introduction to law of Siyar, then concentrates upon treaties and its terminologies, kinds and authority of conducting treaties. Preliminaries of treaties are then discussed and an attempt has been made to clarify and elaborate vital role played by negotiation and diplomacy as a supporting tool. Moreover, how treaties drafted and ratified have been discussed as well. The last part contains effects of treaties on individuals and states and how treaties can be terminated.

### **Concept of Treaties in Law of Siyar**

The rise of Islam, with its universal appeal to all people, inevitably raised for the Islamic state the problem as to how it would conduct its relations with non-Islamic states and with the Non-Muslims religious communities with in its territory. The Muslim jurist developed the special branch of the Sharia', known as the Siyar which

was the law of nations for Muslims.<sup>1</sup>The word Siyar in Arabic is the plural of Sira'h. The famous Hanāfi jurist Imam Sarakhsi has stated in his book Kitab-ul-Mabsūt, that by Sira'h is meant the attitude or behavior adopted by the ruler towards aliens in the state of war and peace.<sup>2</sup>

Thus, term Sira'h, which linguistically signified conduct of Prophet, in general acquired later the restricted sense of the conduct of the Prophet in his wars and later stills the conduct of Muslims ruler in general in international affairs.<sup>3</sup>

The Muslim jurists deal with three subjects under the heading of public international law i-e, law of peace, war and neutrality.<sup>4</sup>The law of peace mostly deals with four topics Sovereignty, Property jurisdiction and diplomatic relations and for undertaking diplomatic tasks treaties work as source, tool and a worthy instrument.

Treaty is one of the branches of international law and its roots go back furthest in time. With emergence of

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<sup>1</sup> Khadduri, Majid & Leibesny, J. Herbert (ed), Law in the Middle East, Vol:1 Origin and development of Islamic Law. The Middle East institute, Washington , D.C, 1955, p.349.

<sup>2</sup> Khadduri, The Islamic Law of Nations, (Shaybani's Siyar),the Johns Hopkins Press, Baltimore, 1966, p.39.

<sup>3</sup> loc.cit

<sup>4</sup> Hamidullah, Muhammad, The Emergence of Islam, ed. & translated by Afzal Iqbal, Islamic Research Institute, n.d.p.114.

political communities came the need for them to deal with each other, to settle questions in dispute without having to go to war, to arrange the consequences of success or failure after a war had been fought, to strike alliances and so on. For such matters they needed from early times some accepted rules covering two matters the sending of envoys and the making of agreements. There are various terminologies for explanation of international treaties in Islam International law. In the writings of classical masters like al-Shaybāni, Abu Yūsūf and Abu Ubayd al- Sarakhsi, the juristic precision is found in the connotations of these terms, which must be the result of a long process of growth.<sup>1</sup>

The treaty is a form of Aqd, which literally means conjunction, tie. In law it means conjunction of elements of disposition, namely proposal and acceptance.<sup>2</sup> Abu Zāhrah defines Aqd as "The conjunction between two sayings from which an order of the shar'iah is deduced, which is applicable to one party or both of them."<sup>3</sup> Ibn Athir defines Ahd, "A comprehensive term, meaning a pledge an oath (al-ya'min), Protection (al-Ama'n), a guarantee (al-Dīhima'), security (al-Hifa'z), safeguarding

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<sup>1</sup>.Islamic Studies Journal, Akhtar, Shamim, Semantics of International Agreements in Early Islam, , Vol:6, p.81.

<sup>2</sup> .Niazi, Liaqat Ali Khan, Islamic Law of Contract, Research Cell Dyal sing Trust Library, 1990, p.9.

<sup>3</sup> . Niazi, Liaqat Ali Khan, ibid, p.11.

the sanctity of a person or a thing, and a testament (al-Wasiyāh).<sup>1</sup> Mu'ahadah means agreement, arrangement, accord, alliance, treaty, and pact. Khuddari says that the Holy Quran emphatically lays down the provisions regarding fulfillment of covenants and mutual agreements:

﴿وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا﴾<sup>2</sup>

{And be true to every promise-for, verily you will be called to account for every promise which you have made."}

Ibn al-'Athir has defined Mith'aq: "An agreement which is strengthened by oath and pledge."<sup>3</sup>

Thus the treaty is called al-Hūdnah, meaning 'a truce' by all the later writers, but the Quran in all its references to this treaty call it an ahd.

﴿بَرَاءَةٌ مِنَ اللَّهِ وَرَسُولِهِ إِلَى الَّذِينَ عَاهَدْتُمْ مِنَ الْمُشْرِكِينَ﴾

﴿إِلَّا الَّذِينَ عَاهَدْتُمْ مِنَ الْمُشْرِكِينَ ثُمَّ لَمْ يَنْقُصُوكُمْ شَيْئًا وَلَمْ يُظَاهِرُوا

عَلَيْكُمْ أَحَدًا فَأَتِمُوا إِلَيْهِمْ عَهْدَهُمْ إِلَىٰ مُدَّتِهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُتَّقِينَ﴾

<sup>1</sup> Akhtar, Shamim, op. cit, p.82.

<sup>2</sup> Al-Quran (17: 34).

<sup>3</sup> Ibn-al-Athir, Abu al Sa'adat al-Mubarak, Al-Nihayah fi Gharib al-Hadith, vol: IV, Dar-ul-Ahay al-Kitab-ul-Arabia, n.d., p.205.

﴿كَيْفَ يَكُونُ لِلْمُشْرِكِينَ عَهْدٌ عِنْدَ اللَّهِ وَعِنْدَ رَسُولِهِ إِلَّا الَّذِينَ عَاهَدْتُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ فَمَا اسْتَقَامُوا لَكُمْ فَاسْتَقِيمُوا لَهُمْ إِنَّ اللَّهَ يُحِبُّ الْمُتَّقِينَ﴾<sup>1</sup>

While the text of treaty as recorded in the Hadith literature has the word 'Sūlh'. In short the dominant idea of the contract in Mohammedan Law is that it establishes a tie of legal relations arising from the consent of the minds of two persons to deal with each other in respect of certain rights of theirs.<sup>2</sup>

## **I. Sanctity of Treaties:**

Islam has enjoined on its followers to fulfill all these obligations and commitments including contract. As it comes in Quran:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُتْلَى عَلَيْكُمْ غَيْرَ مُحِلِّي الصَّيْدِ وَأَنْتُمْ حُرْمٌ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ﴾<sup>3</sup>

{O ye who believe! Fulfill (all) obligations.} Fulfillment of agreement is not only obligations but has eternal rewards as well:

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<sup>1</sup> See Al Quran (9: 1,4,7).

<sup>2</sup> Niazi, Liaqat Ali Khan, ibid, p.16.

<sup>3</sup> Al-Quran (5: 1).

﴿وَالَّذِينَ هُمْ لِأَمَانَاتِهِمْ وَعَهْدِهِمْ رَاعُونَ﴾  
﴿الَّذِينَ يَرْتُونَ الْفِرْدَوْسَ هُمْ فِيهَا خَالِدُونَ﴾<sup>1</sup>

{those who faithfully observe their trusts and covenants...who will inherit paradise: they will dwell there in (forever).} The Holy Prophet entered in many treaties with the local tribes and chiefs of states surrounding the Arabian Peninsula and strictly adhered to the terms of treaties.<sup>2</sup>Treaty of Hūdaybiya'h considered as precedence in regard of sanctity of treaties. The Prophet had not yet signed Treaty of Hūdaybiya'h and Abū Jāndal Ibn Sūhail who had embraced Islam and was being subjected to torture in imprisonment in Makka'h managed somehow to escape from the Quraish and reached the Muslim camp, still in chains. He falls at the feet of holy Prophet and begs for protection and asylum.<sup>3</sup> While Abū Jāndal pleaded for protection, his father, who was none else than the envoy of Quraish, sternly demanded his immediate surrender under the terms of treaty. But Holy Prophet decided to stand by his word and counseled patience to Abū Jāndal and ordered him to return to his

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<sup>1</sup> Al-Quran (23: 8,11).

<sup>2</sup> Rehman, Afzallur, Muhammad Encyclopedia of Seerah, vol: 8, Seerah Foundation, London, 1992, p.366.

<sup>3</sup> Iqbal, Afzal, Diplomacy in Early Islam, Institute of Islamic Culture, Lahore, 1988, p.56.



captor.<sup>1</sup> Thus primary sources of Islamic law attached great sanctity to keeping promises and trust in Islam<sup>2</sup> Webherg, a famous orientalist, stated that“ For the Islamic People, the principle of Pacta Sunt Servanda<sup>3</sup> has also a religious basis; Muslims must abide by their stipulations”.<sup>4</sup> Islam’s universal teachings neither remain dormant nor a mere adornment of the pages of a book, but materialized into a very strong, firm and lasting practical system,<sup>5</sup>nor it presents the picture of treaty like that of spider’s web in which weakers are entangled but the powerful can break it<sup>6</sup> but its whole system succeeded very effectively in solving the practical difficulties of people of whole world.

## **II. Kinds of Treaties:**

- A. Ama’n used in literal sense in the meaning of security and protection according to explanations given by Arabic lexicographers means but security, in the language of law that kind of security that is granted to

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<sup>1</sup> Iqbal, Afzal, *ibid*, p.57.

<sup>2</sup> Rehman, *op.cit.* p.367.

<sup>3</sup> Binding Effect of Treaties.

<sup>4</sup> Hamid,A. Jamshed, *Status of Treaties in Islam; A Comparison with Contemporary Practice*, p.120-21.

<sup>5</sup> Rehman, *ibid*, vol: 3, p.580.

<sup>6</sup> Qureshi, Mohammad Siddique, *Foreign Policy of Mohammad*, 2<sup>nd</sup> Ed, Islamic Publications, 1997, p.111.

the enemies against aggressive acts by individuals Muslims or by the Islamic state.<sup>1</sup>When Muslims besiege a city or a fort of non-Muslims and the latter seeks peace or *Ama'n*, Muslims grant it through a peace treaty or *Ama'n*. It grants the non-Muslims inviolability of person and property and thus provides the ground for legal relationship between them and the Muslims.<sup>2</sup>*Ama'n* can be secured in one of two ways either through Imam or his representative after payment of sum of money for living in *Dar-ul-Islam* unmolested for a period not to exceed a year.<sup>3</sup>If the *Ama'n* proved to be harmful to the interests of Islam, the Imam might repudiate it.<sup>4</sup>

- B. *Mu'waida'h* is the foundation of good relations between the Muslims and Non-Muslims environment Sarakhsi says in his commentary to the work of Shaybāni, " this became the principle for the admissibility of a *Mu'waida'h*, the Muslims are allowed to conclude the same when they are in a position of

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<sup>1</sup> Hanse, Kruse Gottingen, *Islamic International Jurisprudence*, n.d., n.p. p.17.

<sup>2</sup> Hanse, *ibid*, p.18.

<sup>3</sup> Malik reports a case where a commander in the army had given an *Aman* to a non-Muslim and then killed him. Caliph Umar (RAD) disliked the action and called the attention of commanders to live up to his pledge of *Aman* .See Malik, *Al-Muwatta*, vol: 1, p.249-50.

<sup>4</sup> Khadurri, *Law in the Middle East*, p.361.

weakness and they are allowed to resort to fighting when they have mustered strength.<sup>1</sup>

C. Scripturaries who entered into peace treaty with Muslims and became subjects of the Islamic state were called *Dihimis*.<sup>2</sup> Agreements with scripturaries<sup>3</sup> were of somewhat different nature from other peace treaties because they were in the form of permanent covenants or pacts by virtue of which the scripturaries were to become naturalized subjects of the imam and treated as tolerated religious communities.<sup>4</sup> The following conditions governed the covenant of *Dihima'*:

1. It cannot be contracted with polytheist of Arabia because they have to choose between Islam or death.

﴿فَإِذَا انْسَلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾<sup>5</sup>

same rule is applied for Apostates.

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<sup>1</sup> Hanse, op.cit. p.28.

<sup>2</sup> Khadurri, War and Peace in Law of Islam, The John Hopkins Press, Baltimore, n.d.p.176-177.

<sup>3</sup> People who have scriptures such as Jews Christians Sabians etc.

<sup>4</sup> See Khadurri, ibid, p.177-82, 193-95, 213-15.

<sup>5</sup> See Al-Quran (9: 5).

2. The security of the property of Dīhima' is concomitant with security of their lives as the caliph Ali said, 'the covenant of Dīhima' is granted on the condition that lives and properties of Dihimis enjoy the same security and protection as those of our own lives and properties.<sup>1</sup>
- D. Under Umayyad rule both Mūawaiya'h and Abd-ul-Ma'lik I concluded treaties with the Byzantine in which they paid tribute in order to avoid attack while the Muslims were engaged in civil wars. The jurists have differed as to the validity of the imam's action in paying a tribute to non-Muslims authorities. Both al-Awzai' and Sūfyan al-Thaūri who, lived under Umayyad rule saw no harm in doing so in case of necessity.<sup>2</sup> The Hānafi jurists advised against paying tribute unless it was absolutely necessary but al-Shafi advised against it.<sup>3</sup>
- E. Treaty concluded during Abbasid caliphate was so-called Fida' (ransom) treaty. The purpose to release prisoners of war by exchange or by paying in certain

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<sup>1</sup> Alauddin, Al-Azhari, , The Theory and Sources of Islamic Law for Non-Muslims, Madrasah-I-Alia, Dacca, 1962, p.24.

<sup>2</sup> Al-Tabari, Allama Abi Jafar Muhammad Jareer, Tarikh al-Tabari, Urdu trans. Syed Muhammad Ibrahim Nadvi, Karachi Nafees Academy, 2<sup>nd</sup> Edition, 1970, Vol:2, p.17-8.

<sup>3</sup> Abu Yusuf, Ya'qub ibn Ibrahim al Ansari, Kitab-al-Kharaj, Cairo, 1352 A.H.p.207.

amount of money agreed upon.<sup>1</sup> According to Arab chronicles report, the Fida' treaty was made during the reign of Harūn-ul-Ra'shid in 181 A.H.<sup>2</sup>

Thus among all these treaties peace treaties inherited the diverse nature executed in different fields and covered almost half of the foreign relations with Non-Muslims.

### **III. Authority of Conducting Treaties**

Treaty making power in Islam rests in the hand of the head of the state or Prophet Mohammad who as the person charged with the duties of prosecuting the jihad, was ipso facto the ultimate authority who would decide when the jihad was to be relaxed and a peace treaty signed<sup>3</sup> After Holy Prophet his successors do this job and this authority can be delegated to the commanders in the field who were empowered to negotiate treaties with the enemy if they were willing to terms with Islam.<sup>4</sup>

## **Preliminaries of International Treaties**

### **I. Negotiation**

Negotiation as complementary to Diplomacy, a step

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<sup>1</sup> For details on law of Fida; see Shaybani's al-Siyar al-Kabir, vol: 3, p.119, 307-39.

<sup>2</sup> Khadduri Majid, The Islamic Law of Nations Shaybani's Siyar, p.217-18.

<sup>3</sup> Khaduuri, Law in the Middle East, p.364.

<sup>4</sup> Khadurri, War and Peace in the Law of Islam, p.203.

that have to be taken before reaching any agreement. A tool and instrument, which further lead to good and friendly relationship, if accurately applied and eventually became the cause of treaty.

The substitute word used for negotiation is Mūfaza't.<sup>1</sup>The derivation of this word is from Fa'wāz, which means to negotiate<sup>2</sup>where as in terminology of fiqh this word is used for the settlement of trade affairs and of disputes.<sup>3</sup> At the advent of Islam – a commencement of new bright era in world history –the word Mūfaza't had not been in the usage, particularly for negotiating purposes. Instead of it other words were introduced that were al-Mha'jah and al-Jadāl<sup>4</sup>, having the same meaning as one has in mind for negotiation in modern terminology Quran used this word in this meaning:

﴿قَالُوا يَا نُوحُ قَدْ جَادَلْتَنَا فَأَكْثَرْتَ جِدَالَنَا فَأْتِنَا بِمَا تَعِدُنَا إِن كُنْتَ مِنَ الصَّادِقِينَ﴾<sup>5</sup>

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<sup>1</sup> Ibne-Manzoor, Mohammad Bin Mukram, Lisan-ul-Arab, vol: 4, Dar-ul-Jail wa Dar-ul-Lisan-ul-Arab, Beirut, 1408/1988, p.1144.

<sup>2</sup> American Heritage Dictionary of English Language, 3<sup>rd</sup> Edition, Houghton Mufflin Company Boston, New York, London, 1992, p.1209.

<sup>3</sup> International Encyclopedia of Social Sciences, vol: 11, 1973p.117.

<sup>4</sup> Ibne-Manzoor, ibid, vol: 1, p.1144.

<sup>5</sup> Al-Quran (11: 32), See further (22: 68).

{They said: O Noah! Thou hast disputed with us. And (much) hast thou prolonged the dispute with us; now bring upon us what thou threatenest us with, if thou speakest the truth!}

﴿وَإِنْ جَادَلُوكَ فَقُلِ اللَّهُ أَعْلَمُ بِمَا تَعْمَلُونَ﴾ (22.68)

Thus negotiation is a procedure for discussing contradictory matters between Muslims and non-Muslims or two groups having different interest and consequently reached on agreement by applying specific network of principles ordained by Islam and Divine law.

Negotiation is as early as human history. It was used when first creation of this materialistic world were being created by God after negotiating the descend of vicegerent on earth with angels.

﴿وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً قَالُوا أَتَجْعَلُ فِيهَا مَنْ يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ﴾<sup>1</sup>

After emergence of Islam, some principles are admonished by God to Prophet for convincing the opponent and start the process of negotiation with common terms that it may concluded in form of future agreement.

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<sup>1</sup> See al-Quran (2:30).

﴿قُلْ يَا أَهْلَ الْكِتَابِ تَعَالَوْا إِلَى كَلِمَةٍ سَوَاءٍ بَيْنَنَا وَبَيْنَكُمْ أَلَّا نَعْبُدَ إِلَّا اللَّهَ وَلَا نُشْرِكَ بِهِ شَيْئًا وَلَا يَتَّخِذَ بَعْضُنَا بَعْضًا أَرْبَابًا مِّنْ دُونِ اللَّهِ فَإِن تَوَلَّوْا فَقُولُوا اشْهَدُوا بِأَنَّا مُسْلِمُونَ﴾

{Say: 'O People of the Book! come to common terms as between us and you: that we worship none and God; that we associate no partners with him; that we erect not from among ourselves Lords and patrons other than God. If then they turn back, say ye: Bear witness that we (at least) are Muslims (bowing to God's will)}<sup>1</sup> other principles includes: truthfulness<sup>2</sup>, safeguarding of Muslim's interest, unity and use of threat. As far as objectives of Negotiation are concerned, they are invitation towards Islam<sup>3</sup>, avoidance<sup>4</sup> and termination of war<sup>5</sup> and conducting the treaties.<sup>6</sup>

For being a good 'negotiator certain skills require i-e

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<sup>1</sup> Al-Quran (3:64).

<sup>2</sup> Iqbal, Afzal, Diplomacy in Early Islam, p. 126.

<sup>3</sup> See for further detail Ibne Sa'ad, Al-Tabqat, vol: 2, p.230, Ibne Hisham, Kitab Sirat Rasul, vol: 4, ed.Ferdinand Wenstenfeldm, 1858-60, p.152-53.

<sup>4</sup> See for further detail Al-Shafi, Abu Abdullah Muhammad Idris, Al-Umm, vol: 4, Cairo 1321-25A.H., p. 175, Sarakhsi, Shams-ud-Din, Kitab-Al-Mabsut, vol: 10, Cairo, 1324 A.H., p. 6-30.

<sup>5</sup> See Al-Quran (Taubah: 61), Al-Tabari, ibid, p.460.

<sup>6</sup> Ibne Hisham, ibid, Vol:3, p. 202, Al-Tabari, ibid, vol:2, p. 600.



warm welcome to opponents<sup>1</sup>, avoid ambiguity, brevity and Moderation, skill of communication,<sup>2</sup> and tolerance and controlled tempered.<sup>3</sup>Where as application of methodology of negotiation based upon this verse:

﴿ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحُكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِمَنْ ضَلَّ عَنْ سَبِيلِهِ وَهُوَ أَعْلَمُ بِالْمُهْتَدِينَ﴾<sup>4</sup>

{Invite (all) to the way of Lord with wisdom and beautiful preaching; and argue with them in the ways that are best and most gracious: for thy Lord knoweth best, who have strayed form his path and who receive guidance.}

## **II. Diplomacy**

The steps, which are taken at the time of conflicts and problems to resolve or settle them through peaceful, mean i-e diplomacy.<sup>5</sup>The diplomatic agent was called by Muslim publicists either a Rasūl or Safīr. The term Rasūl is derived from irs'al, which literally means sending and includes the dispatch of an agent charged with specific mission.<sup>6</sup>Thus the term Rasūl may mean either a

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<sup>1</sup> Iqbal, Afzal, ibid, p. 116.

<sup>2</sup> loc.cit.

<sup>3</sup> Iqbal, Afzal, ibid, p.126.

<sup>4</sup> Al-Quran (16: 125).

<sup>5</sup> Rahman, Afzallur, ibid, p.15.

<sup>6</sup> Khadurri, Majid, War and Peace in Law of Islam, p.240.

'prophet' or 'an emissary': the term Safir is derived from the term Safar that means in addition to the functions of Rasūl, conciliation and peaceful settlements through traveling.<sup>1</sup>In practice, however, the two terms were often used interchangeably, although later text writers restricted the use of Safir for diplomatic agents and reserved the religious meaning of apostle for Rasūl.<sup>2</sup>The Oxford dictionary provides the following definition: "Diplomacy is the management of international relations by negotiating, the method by which relations are adjusted and managed by ambassador and envoys: the business or art of the diplomatist."

In every cultured society the diplomatic representatives enjoy certain privileges and immunities. Muslims carefully respected the immunity of envoys and diplomatic missions.<sup>3</sup>This convention of diplomatic immunity goes back to the time of prophet Mohammad (PBUH), Ibn Masūd said, the emissaries of Mūsaylima', the liar prophet came to Mohammad, who enquired, [do you believe that I am the prophet of Allah] the emissaries replied, "The Mūsaylima' is the prophet of Allah", prophet Mohammad remarked, [ if in were in the habit of

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<sup>1</sup> loc.cit.

<sup>2</sup> loc.cit.

<sup>3</sup> Fahad, Obaidullah, Principles of Diplomacy in Islam: Privileges and immunities, Hamdard Islamicus, vol: XII, no.3, p.41.

executing emissaries , I would have ordered for your execution.], Ibne Masūd says that the traditions since then was set that emissaries should not be executed.<sup>1</sup>The protection was usually extended to all those concerned; the envoy, his family and companions, personal effects or goods carried with them and the period of diplomatic assignment.<sup>2</sup>The diplomatic representatives whether Muslims or Christians were exempted from financial levy, the civil and criminal jurisdictions of the receiving country.<sup>3</sup>

In the history of Islam envoys were accorded full freedom of prayer and religious rituals. The Prophet allowed the delegations of the Christian of Najr'an to offer the prayers in very mosque of Medinah.<sup>4</sup>The diplomats throughout the history of Islam had the privilege to be busy in trade and commerce.<sup>5</sup>According o Muslim jurists envoys would not be allowed to sell prohibited goods such as pork and wine.<sup>6</sup>Thus Diplomacy

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<sup>1</sup> Al-Haithami, *Majma' al-Zawahid*, vol. V, p.315, c.f. <sup>1</sup> Fahad, Obaidullah, *ibid*, p.42.

<sup>2</sup> Fahad, Obaidullah, *ibid*, p.42.

<sup>3</sup> Fahad, Obaidullah, *ibid*, p.45.

<sup>4</sup> Ibne Hisham, *Seerat Rasullullah*, *op.cit.*, p.402; Ibn Sa'd, *Tabaqat*, *op.cit.*, vol.1.p. 85; Hamidullah, *op.cit.*, p. 140.

<sup>5</sup> Fahad, Obaidullah, *op.cit.*, p.46.

<sup>6</sup> Abu Yusuf, *op.cit.*, p.p.188-90.

in Islam is to relate the religious orientation with professionalism.

## **Elements of Treaties**

### **I. Drafting of Treaties**

International treaties must be in writing and jurists based their arguments on this Qur'anic verse:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَيْتُمْ بِدِينٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُبَ بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسَ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكَّرَ إِحْدَاهُمَا الْأُخْرَى وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا وَلَا تَسْأَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَى أَجَلِهِ ذَلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَى أَلَّا تَرْتَابُوا إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ وَلَا يُضَارَّ كَاتِبٌ وَلَا شَهِيدٌ وَإِنْ تَفْعَلُوا فَإِنَّهُ فُسُوقٌ بِكُمْ وَاتَّقُوا اللَّهَ وَيُعَلِّمُكُمُ اللَّهُ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ<sup>1</sup>﴾

{O ye who believe! When ye deal with each other, in

<sup>1</sup> Al-Quran (2:282).

transaction involving future obligations in a fixed period of time reduce them to writing.} And on the practice of the Prophet Shaybāni and other say that a treaty must be in writing and date of writing the treaty and the date on which it comes into force must be precisely mentioned.<sup>1</sup>Muslim treaties were, on the whole brief and general and phraseology should be simple.<sup>2</sup>General attention was given on providing the details and it was managed, particularly, to abide by the settled stipulations.<sup>3</sup>The preamble of every treaty was started with 'the name of Allah, the Most Merciful and Compassionate', and the names of the representatives of the parties concerned with their titles.<sup>4</sup>Contents of the treaties varied with the purpose of making them. The treaties with the dihimis were treated differently. Their treaties will be in form of constitutional guarantees from the moment the dihimis communities ceased to be separate entities.<sup>5</sup>The duration of the treaties with non-Muslims authorities was specified by the Muslim jurists. The Hanāfī and Shafi schools held that a peace treaty with enemy should not exceed the period of ten years. They based their arguments on the precedent of treaty of

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<sup>1</sup> Hamidullah, op.cit., p.261.

<sup>2</sup> Khadurri, op.cit., p.218.

<sup>3</sup> Qureshi, Mohammad Siddique, Foreign Policy of Muhammad, p.116.

<sup>4</sup> Khadurri, op.cit., p.219.

<sup>5</sup> Khadurri, ibid., p.220.

Hūdaybiya'h.<sup>1</sup>The treaty often ends by stating the names of the witness who were present at the time of the drafting the text. <sup>2</sup>The treaties also include solemn promises for the observance and execution of the treaty, the signature of the duly authorized persons and ratification as well; the sanction of execution such as hostages is also included. And along with the main treaty sometimes annexes, supplements and even secrets sections are also to be found.<sup>3</sup>

## **II. Ratification of Treaties**

Consent (Mūwa'fika'h)<sup>4</sup> derived from Wafk, which means conformity and agreements. It stands for consenting, approving, confirmity and unanimous consent.<sup>5</sup>Signature (Tāwki)<sup>6</sup> means signing a letter with Royal Signet, the royal Signet put to diplomas, letter, patent and other public deeds, containing the king's name and title.<sup>7</sup>Ratification (Al-Tāsdik Alal Mu'wahida'h)

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<sup>1</sup> Abu Yusuf, op.cit., p.207-08.

<sup>2</sup> Khadurri, op.cit., p.219.

<sup>3</sup> Hamidullah, op.cit., p.262.

<sup>4</sup> Iach Don, N.S. The Oxford English-Arabic Dictionary of Current Usage, The Clarendon Press, Oxford, 1978, p.262.

<sup>5</sup> Dr. Richardson, John, Dictionary Persian Arabic English, New Edition by Francis Johnson, Sang—meel Publications, 1984, p.1519.

<sup>6</sup> Iach Don, .N.S. op.cit., p. 1150.

<sup>7</sup> Dr. Richardson, John, op.cit., p.466.

derived from Tasdik, which means verification and investigation.<sup>1</sup>

While concluding the treaties, the sole source of expressing the consent of both contracting parties is signature and ratification. Mutual consent indicates that there should not be coercion and if it exists, treaty would be void and null. In case of signature, Shaybāni and other Jurists hold that signature of authorized persons must be put into the body of the treaty.<sup>2</sup> Generally treaties are negotiated and provisionally settled by representatives of States. For matters ultravires, they referred even in the time of Shaybāni to the central government. History records a letter of Khalid-ibn-al-Walid in which he asked from Yāman for instructions from the prophet.<sup>3</sup> The main objective of ratification of treaty to reconsider and recheck the clauses of treaties either it suited to the regulation of Islam or not. Islam does not allow any nation or group to conclude such a treaty, which affects the fundamental of Islam.<sup>4</sup> Similarly Islam does not justify any such treaty, which might have been concluded under force and coercion.<sup>5</sup> These factors should be under consideration of authorized persons

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<sup>1</sup> Dr. Richardson, John, op.cit., p.932.

<sup>2</sup> Gilani, Riyaz-ul-Hassan, *The Reconstruction of Legal Thought in Islam*, Idara Tarjuman-ul-Quran, Lahore, 1983, p.349.

<sup>3</sup> Hamidullah, op.cit., p.263.

<sup>4</sup> Qureshi, Mohammad Siddique, op.cit., p.107.

<sup>5</sup> loc.cit.

while ratification of treaty.

## **Effects of Treaties**

Treaty of Hūdaybiya'h which is the symbol of sacrifice of present sentimentalism for the construction of better future, was conducted after protracted negotiation, in the out-skirt of Makka'h<sup>1</sup> in 628 AD. It was not only a precedent for future treaties but itself had acquired a great significance regarding its long lasting effects which resulted beneficial for Muslims in the end. As the Quran confirms this victory in these words:

﴿إِنَّا فَتَحْنَا لَكَ فَتْحًا مُبِينًا﴾<sup>2</sup>

{Verily We have granted thee manifest victory.} The treaty of Hūdaybiya'h is certainly a signal of the victory for Islam. The terms in the treaty show the greatness of the Holy Prophet (SAW) and the superiority of his cause.<sup>3</sup> As a matter of fact, there is hardly an example most excellent than this in evaluation of effect of treaties in Islam.<sup>4</sup>

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<sup>1</sup> Ibn-Hisham, *ibid*, p.998.

<sup>2</sup> Al-Quran (48: 1).

<sup>3</sup> Bhatti, Mohammad Sohail, *A Brief History of Islam*, Vol:1, Caravan Enterprise, Lahore, 1996, p.149.

<sup>4</sup> Qureshi, Mohammad Siddique, *Foreign Policy of Muhammad*, p.162.



The effects can be on individuals and states, details are given below:

## **I. Effects on Individuals**

Islam has however; laid down certain general principles with regard to those who voluntarily accept the law of Islam before fighting or during fighting will be treated according to the terms of the treaty that they have made.<sup>1</sup> Consequently, the factor of embracing makes the land of that new convert a Dar-ul-Islam and the implementation of Islamic law becomes necessary upon it. All the jurists unanimously agreed that property and personality regarding new convert would be safeguarded as the properties and personalities of Muslims in D'ar-ul-Islam.<sup>2</sup>

The covenant of Dihimma'h is concluded between the Muslims on one side and Dihimies, on the other, for a permanent cessation of war between Muslims and Dihimies.<sup>3</sup> They were allowed to live in Islamic state

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<sup>1</sup> Rehman, Afzallur, Muhammad as a Military Leader, Islamic Publications Pvt Ltd, 1990, p.287.

<sup>2</sup> Al-Sarakhsi, Sharah Al-Siyar-Al-Kabir, (Shaybani's Siyar) vol.4, Matba'h, Daira-ul-Ma'rif-un-Nazamiah, hyderabad, 1335, p. 319.

<sup>3</sup> Al-Azhar, Alauddin, The Theory and Sources of Islamic Law for Non Muslims, p.23.

unmolested on the condition that they pay the Poll tax and accepted the status defined by treaties issued to them by the Muslim authorities. The rules as the result of treaty governs the relations between the Muslim and Dihimies, derived from the Quran, Hadith and Muslim Jurists opinions.<sup>1</sup>

Every male, adult, free and sane dihimmi was required to pay the Jizya<sup>2</sup> the amount of which was to be fixed by agreement. Women, children, slaves and poor were exempted.<sup>3</sup> As Allah ordered in Qur'an:

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ﴾<sup>4</sup>

{Fight those who believe neither in God nor the last day, nor hold that forbidden by God and His Apostle, nor acknowledged the religion of truth (even if they are) of the people of the Book, until they pay the Jizya with willing submission, and feel themselves subdued.}

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<sup>1</sup> Khadduri, Majid, (ed), Law in the Middle East, p.363.

<sup>2</sup> Poll Tax.

<sup>3</sup> Mawardi, Abu al-Hassan Ali ibn Muhammad ibn Habib, Kitab-ul-Ahkam-al-Sultaniyah, M.Enger Bonn, (ed.), 1853, p.137.

<sup>4</sup> Al-Quran (9: 29).

The Dihīmies on certain occasions required serving as hosts to Muslim officials or travelers who passed through their community for limited time.<sup>1</sup>The Dihīmies were granted a sort of self-rule; each community was left to be governed by its religious head that was responsible to Muslim ruler.<sup>2</sup> Thus Dihīmies were not bound by all the Islamic laws but were to their own canon laws.

Non-Muslims may be permitted to stay in the dominions of Islam in the capacity of Mūsta'mins by obtaining Ama'n.<sup>3</sup>That is the promise of security made to unbelievers, which breaks the principle of jihad, and this promise may also be attained through conducting an international treaty.<sup>4</sup>They were affected by certain rules:

Mūsta'min was permitted to conduct business transactions and to buy or sell commodities but never those, which were prohibited by Islam, such as liquor or pork. Usury contract were also prohibited.<sup>5</sup>If the non-Muslim entered the world of Islam without an Ama'n or was unable to secure he was killed unless he adopted

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<sup>1</sup> The Christian of Najran were required to accept a maximum period of a month, while the Christians of Damascus were required only three days. (Hitti's translation, p.98-9).

<sup>2</sup> Khadduri, op.cit, p.364.

<sup>3</sup> Khadduri, op.cit, p.361.

<sup>4</sup> Hans Kruse, Gottingen, Islamic International Jurisprudence, p.18.

<sup>5</sup> Khadduri, op.cit, p.361.

Islam. The Shafi school permitted him a period of four months to leave the Islamic state, pay the jizya'h as a Dihimies or adopt Islam.<sup>1</sup>

If the Mūsta'min died in the Islamic state leaving his property there, the Ama'n granted was valid for his property too, and his heirs could take it from the Islamic state. But if the Mūsta'min went back to his country and died, leaving his property in the Islamic State, the property could not be taken from the Islamic state by his heirs since the man expired with the departure of the Mūsta'min.<sup>2</sup> Thus they should be treated under treaty obligation which right they gained and which obligation they have to perform.

## **II. Effect of Treaties on States and Rulers**

Treaty obligation should be observed till its end and imam is not allowed to violate its terms and terminate it without any reasonable grounds. In Islamic law treaty obligation is given great importance, priority and held in great esteem. The Quran emphasis in the strongest terms the necessity to adhere to the conditions of contract made with foreign powers whether friend or foe.<sup>3</sup>

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<sup>1</sup> Shafi, Mohammad, Kitab-al-Umm, p.201.

<sup>2</sup> Shafi, ibid, p.191.

<sup>3</sup> Rehman, Afzallur, Encyclopedia of Seerah, vol.8, p.830.

Upon his succession to the caliphate, Uthma'n the third caliph, wrote in a message to his officials and governors"

" Truly, Allah has created creation in right! He accepts but right. Take right and give right. And dwell upon your trust ,do not be the first to violate it and become accomplices of your successors....fulfill your vows and do not oppress the orphans or the ally (those in treaty relations). Allah is the opponent of him who oppresses them.<sup>1</sup>

Muslim must always be ready for the good fight lest it be forced; even in the midst of fight Muslim must always be ready for peace if there is any inclination towards peace on the other side. it should be a joyful duty not for itself, but to establish the reign of peace and righteousness and God's law.<sup>2</sup> As Quran stated in these words:

﴿وَإِنْ جَنَحُوا لِلسَّلَامِ فَاجْتَحِ لَهَا وَتَوَكَّلْ عَلَى اللَّهِ إِنَّهُ هُوَ السَّمِيعُ  
الْعَلِيمُ﴾<sup>3</sup>

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<sup>1</sup> Azzam, Abd-al-Rahman, The Eternal Message of Muhammad, The Denin Adain Company, 1979, p.140.

<sup>2</sup> Ali, A.Yousaf, The Holy Quran, Text, Translation and Commentary", Amana Corp.Maryland, 1983, p. 430.

<sup>3</sup> Al-Quran (8: 61).

{But if the enemy inclines towards peace. Do thou (also) incline towards peace, and trust in God; for He is the one that heareth and knoweth.}

According to Ra'zi this verse indicates towards the law that Muslims are obliged too have peace treaty even during fighting on the condition if opponent has an interest in it. In other words, Muslims are considered as to stop the war and give them positive response. But at the time of concluding treaty its stipulations and terms should be without any false conditions.<sup>1</sup>

Safeguarding of non-combatants is necessary with whom Muslims has the treaty relations.<sup>2</sup>As it comes in Quran:

﴿إِلَّا الَّذِينَ يَصِلُونَ إِلَى قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ أَوْ جَاؤُوكُمْ حَصِرَتْ صُدُورُهُمْ أَنْ يُقَاتِلُوكُمْ أَوْ يُقَاتِلُوا قَوْمَهُمْ وَلَوْ شَاءَ اللَّهُ لَسَلَّطَهُمْ عَلَيْكُمْ فَلَقَاتِلُوكُمْ فَإِنْ اعْتَزَلُوكُمْ فَلَمْ يُقَاتِلُوكُمْ وَأَلْقَوْا إِلَيْكُمُ السَّلَمَ فَمَا جَعَلَ اللَّهُ لَكُمْ عَلَيْهِمْ سَبِيلًا﴾<sup>3</sup>

{Except those who join group between whom and you there is a treaty (of peace) or those who approach you with hearts restraining them for fighting their own people....}

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<sup>1</sup> Al-Razi, Tafsir Ar-Razi, vol.4, n.d., n.p. p.378.

<sup>2</sup> Rehman, Afzallur, Muhammad as a Military Leader, p.283.

<sup>3</sup> Al-Quran (4: 90).

A bilateral or multilateral treaty or a fida' treaty is affected between the Islamic and other exchange and release of the prisoners. The provisions of such a treaty become obligatory. Ibn Hajār narrates from Imam Ahmad Ibn Hānmbāl: " if the Muslims have got the prisoners and non Muslims too have them, and both of them agree on their exchange it must be done."<sup>1</sup>The prophet liberated them on various kinds of ransom and compensation.<sup>2</sup>The liberties out of them required to teach reading and writing to the illiterate Muslims. Some times money, armaments and other goods were accepted. It is immaterial whether the ransom is paid by the prisoners from his own pocket or by his government. On many occasions the Prophet ordered for gratuitous release of the prisoners. Many of the prisoners of Badr were released gratuitously.<sup>3</sup>The exchange of prisoners is also a kind of ransom. It is not necessary that the exchangeable prisoners should be equal in number on both sides.<sup>4</sup>

General effects of peace treaty which concluded after termination war are:

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<sup>1</sup> Gilani, Riyaz-ul-Hassan, Reconstruction of Legal Thought in Islam, p. 181.

<sup>2</sup> Ibn Hisham, ibid , p.462.

<sup>3</sup> At-Tabary, At-Tarikh, vol.1, p.354.

<sup>4</sup> Gilani, op. cit , p.181.

- A. The subjects over which hostilities had broken out settled.<sup>1</sup>The rights of belligerency are brought to an end.<sup>2</sup>
- B. Unless otherwise provided in the treaty, the status Quo before the conclusion of the treaty will be maintained.<sup>3</sup>
- C. As soon as treaty is concluded, the treaties suspended during the war and which require no renewal, automatically revive.<sup>4</sup>
- D. (Meswar and Marwa'n reported that, " They made a treaty to put an end to war for ten years during which people would be safe and no hatred should subsist between us and that there should be no theft of sword or treachery.)<sup>5</sup>

### **Termination of Treaties in Law of Siyar**

There is a great emphasis on the fulfillment of oaths and promises in the Qur'an and the Sunna'h and a

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<sup>1</sup> Hammidullah, Mohammad, *The Muslim Conduct of State*, h.Muhammad Ashraf, Lahore, 7<sup>th</sup> Edition, 1977, p.261.

<sup>2</sup> Qureshi Mohammad, Siddique, *Foreign Policy of Mohammad*, p.105.

<sup>3</sup> Hammidullah, op. cit , p.261.

<sup>4</sup> Qureshi, op.cit, p.106.

<sup>5</sup> Maulana Karim, Farul, "Al-Hadis-an English Translation and Commentary of Mishkat-ul-Masbih,  
Ch: 23(Treaty),H. no.139, vol.2, Islamic Book Service, New Delhi, India, 1998, p.403.



condemnation of those who violate them. As it is stated in Qur'an:

﴿وَلَا تَكُونُوا كَالَّذِينَ نَقَظَتْ غَزَلَهَا مِنْ بَعْدِ قُوَّةٍ أَنْكَاثًا تَتَحَذُّونَ  
أَيْمَانَكُمْ دَخَلًا بَيْنَكُمْ أَنْ تَكُونَ أُمَّةٌ هِيَ أَرْبَى مِنْ أُمَّةٍ إِنَّمَا يَبْلُوكُمُ اللَّهُ  
بِهِ وَلِيَبَيِّنَ لَكُمْ يَوْمَ الْقِيَامَةِ مَا كُنْتُمْ فِيهِ تَخْتَلِفُونَ﴾<sup>1</sup>

{Nor take your oaths to practice deception between yourselves, lest one party should be more numerous than another for God will test you by thin and on the Day of Judgment.}

There fore Allah warns that every treaty is a test of the character of those who enter into it, and of their nations. They might gain some apparent advantage for their people by breaking a treaty, but they will not escape the consequences on the Day of Judgment.<sup>2</sup>

Again Allah warns those people who do not honor their pledges in theses words:

﴿وَالَّذِينَ يَتَّقُونَ عَهْدَ اللَّهِ مِنْ بَعْدِ مِيثَاقِهِ وَيَقْطَعُونَ مَا أَمَرَ اللَّهُ بِهِ أَنْ  
يُوصَلَ وَيُفْسِدُونَ فِي الْأَرْضِ أُولَٰئِكَ لَهُمُ اللَّعْنَةُ وَلَهُمْ سُوءُ الدَّارِ﴾<sup>3</sup>

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<sup>1</sup> Al-Quran (16: 92).

<sup>2</sup> Rehman, Afzallur, Mohammad Encyclopedia of Seerah, vol: 3, p.580.

<sup>3</sup> Al-Quran (13: 25).

{But those who break the covenant of God, after having plighted their words thereto, and cut asunder those things, which God has commanded to be joined, and work mischief in the land; on them is the curse; far them is the terrible home! }

There are several traditions of the Holy Prophet that prohibit the pretext violation of pledge and doing wrongs to the people with whom treaties have been concluded. Abdūllah Bin Umar narrates that Holy Prophet said:

(Whosoever shall kill a person, with whom an agreement has been made, he will not have even the smell of paradise whereas its smell is felt from a distance of forty years)<sup>1</sup>

Although termination of treaties have been considered sin in Islam. But due to certain reasons, sometime treaty could be expired, dissolved, void and cancelled. The reasons are as follows:

By their very nature treaties must be of temporary duration, for in Muslim legal theory the normal relations between Muslim and non-Muslim territories are not peaceful, but warlike, sine theory, the Jihad could not possibly be suspended more than ten years, treaties must be terminated by the end of that period, even though the duration is not specified in its terms.<sup>2</sup> Jurist advises the

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<sup>1</sup> Bukhari, Abdullah bin Mohammad bin Ismail, Ch. Al-Jizyah.

<sup>2</sup> Khadurri, Majid, War and Peace in Law of Islam, p.220.

imam to specify the duration in order to clearly indicate the temporary character of treaties.<sup>1</sup>

The Prophet and orthodox Caliph advised their governors and the jurists of Islam agreed that the enemy must be forewarned and served with the reasons for which pledge is to be discarded.<sup>2</sup>

As there was a treaty between Amir Mūawaiya'h and the eastern Romans, when it was about to expire, Mūawaiya'h prepared to attack the empire. While the army was proceeding he saw a horseman approached and exclaimed, "God is Great! God is Great! One should abide by ones treaties and should not break them like this". It was discovered that the horseman was a 'companion'<sup>3</sup> of the Prophet (SAW). Amir Mūawaiya'h enquired as to why he had come. He replied, " The Prophet told us not to break a treaty before its time expires. If you want to break this treaty at least informs the other party."<sup>4</sup> Mūawaiya'h was so impressed that he

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<sup>1</sup> Ibn-e- Qudama, Abu Muhammad abd Allah ibn Ahmed ibn Muhammad, Al-Mughni, ed. M.Rashid Rida, Cairo, 1376 A.H., vol: 3, p.459-60.

<sup>2</sup> Azzam, Abd-al-Rahman, The Eternal Message of Mohammad, p.142-43.

<sup>3</sup> Hazart Omar bin Musa (Rad).

<sup>4</sup> According to Dr. Mohammad Hamidullah and Wahbit-us Zahili Muslims can enter in permanent treaty with Non Muslims to cope up with circumstances.

came back and dispersed his army.<sup>1</sup> If the treaty are regular, but the imam found that its terms are harmful to Islam he is permitted to declare its termination, provided an adequate prior notification is sent to the other party informing them of Muslim intention to terminate the treaty.<sup>2</sup>

Before termination by the end of its duration, the treaty might be declared terminated by mutual consent; the imam, however, should never agree to a treaty in which only one of the two parties was allowed to terminate the treaty, even if he were the one given the right. Mutual consent must be the underlying principle of termination in the same way as it is the underlying principle for signing a treaty.<sup>3</sup>

If the imam entered into treaty arrangements which provided terms he was incapable of fulfilling, the treaty was regarded as void.<sup>4</sup>

Every agreement and contract with the enemy must be honored and one must not be first to break it. But this policy need not to be followed in the case of those unbelievers who do not hold to their promises and agreements but break them whenever they find it

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<sup>1</sup> Qureshi, Ishtiaq Hussain, *Islam: The Religion of Peace*, p.131.

<sup>2</sup> Shaybani, Mohammad, *Al-Siyar-al-Kabir*, vol.3, p.261.

<sup>3</sup> Ibn-e-Qudama, *Al-Mughni*, vol.8, p.461-62.

<sup>4</sup> Shaybani, *op.cit.* vol.4, p.66.

convenient or useful.<sup>1</sup>In these types of circumstances the fulfillment of a pledges may be withheld specially when the common welfare of Muslims is betrayed by the other party whose deception and ill will are beyond doubt. It is permissible then to cast off the pledge.<sup>2</sup>

﴿وَأِمَّا تَخَافَنَّ مِنْ قَوْمٍ خِيَانَةً فَانْبِذْ إِلَيْهِمْ عَلَى سَوَاءٍ إِنَّ اللَّهَ لَا يُحِبُّ الْخَائِنِينَ﴾<sup>3</sup>

{If thou fearest treachery from any group, throw back (their covenant) to them. (So as to be) an equal terms, for God loveth not the treacherous}

Treaties with Dihimies, however, are by their very nature perpetual in character and could not be terminated.<sup>4</sup>And there is a unanimous agreement of jurists regarding the respect of this permanent agreement.<sup>5</sup>Even if few Dihimies violated their contractual obligation, the treaty remained in force regarding the others. As they are under the subjugation

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<sup>1</sup> Rahman, Afzallur, Mohammad Encyclopedia of Seerah, vol.3, p.582.

<sup>2</sup> Azzam, Abd-al-Rahman, The Eternal Message of Mohammad, p.142.

<sup>3</sup> Al-Quran (8: 58).

<sup>4</sup> Khadduri, Majid, War and Peace in law of Islam, p.221.

<sup>5</sup> Al-Kasani, Abu Bakr ibn Masud, Al-Bidaya-al-Sinayah fi Tartib Ushairah, vol.7, Dar-ul-Kutub-ul-Arabi, Beirut Lebanon, 1974, p.109.

of Islamic government, cannot give harm and create any difficulty for them.<sup>1</sup> Thus if Dihimies failed to observe his duties he was ordinarily punished, although in theory he had the right to renounce his obligations and leave for Dar-ul-Harb.<sup>2</sup>

The people against whom Muslims must wage war are those who indulge in deceitful activities and break their treaties whenever they fell like doing so.<sup>3</sup> Muslims are enjoined to take severe action against those who repeatedly break their treaties in theses words:

﴿كَيْفَ وَإِنْ يَظْهَرُوا عَلَيْكُمْ لَا يَرْقُبُوا فِيكُمْ إِلَّا وَلَا ذِمَّةً يُرْضُونَكُمْ بِأَفْوَاهِهِمْ وَتَأْبَى قُلُوبُهُمْ وَأَكْثَرُهُمْ فَاسِقُونَ﴾<sup>4</sup>

{How (can there be such league) seeing that if they get an advantage over you, they respect not in you the ties of kinship or of covenant? With (fair words from) their mouths they entice you but their hearts are averse from you, and most of them are rebellious and wicked.}

It would never be right for Muslims to break a treaty unilaterally. It is only when their enemies break their contract and try to evict them from their homes and take

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<sup>1</sup> Al-Shafi, Al-Umm, vol.4, p.109.

<sup>2</sup> Khadurri, op.cit.p.222.

<sup>3</sup> See Al-Quran (8: 55-57).

<sup>4</sup> Al-Quran (9: 8).

the initiative in fighting then they are permitted to fight<sup>1</sup>.  
As it comes in Qur'an:

﴿لَا يَرْقُبُونَ فِي مُؤْمِنٍ إِلَّا وَّلَا ذِمَّةً وَأُولَئِكَ هُمُ الْمُعْتَدُونَ﴾<sup>2</sup>

﴿وَإِنْ تَكُونُوا أَيْمَانُهُمْ مِنْ بَعْدِ عَهْدِهِمْ وَطَعْنُوا فِي دِينِكُمْ فَقَاتِلُوا أَتِمَّةَ الْكُفْرِ

إِنَّهُمْ لَا أَيْمَانَ لَهُمْ لَعَلَّهُمْ يَنْتَهُونَ﴾

﴿أَلَا تَقَاتِلُونَ قَوْمًا نَكَثُوا أَيْمَانَهُمْ وَهَمُّوا بِإِخْرَاجِ الرَّسُولِ وَهُمْ بَدُّوْكُمْ

أَوَّلَ مَرَّةٍ أَتَخْشَوْنَهُمْ فَاللَّهُ أَحَقُّ أَنْ تَخْشَوْهُ إِنْ كُنْتُمْ مُؤْمِنِينَ﴾

{In a believer they respect not the ties either of kingship or of covenant! it is they who have transgressed all bounds. But if they violate their oaths after their covenant and taunt you for your faith, -fight ye the chiefs of unfaith: for their oaths are nothing to them: that thus they may be restrained. Will ye not fight people who violated their oaths, plotted to expel the apostle, and took the aggressive by being the first (to assault) you? Do ye fear them? Nay it is God whom ye should more justly fear, if ye believe.}

The Muslim must wage war against people who make treaties with the Muslims agreeing to obey their law and

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<sup>1</sup> Saiyadain, K.G, Islam: The Religion of Peace, Mar Anand Publications, New Delhi, 1997, p.163.

<sup>2</sup> Quran (9: 10, 12-13).

then rebel against the Muslim State, and Muslims are commanded to declare open war on those who ignore all rules of morality and humanity in damaging the interests of the Muslims until they repent and submit to the Islamic State.<sup>1</sup>

## **Conclusion**

Islamic International law surpasses contemporary international law in peacefulness, tolerance and fidelity to their treaty obligations. Islamic principles of treaties has assumed even greater importance in recent years. Islamic states play their role in the development of the rules, which reflect Islamic values that govern inter-state relations through their concerted efforts.

Thus, it may be concluded that almost the same values, norms and principles enshrined in the existing international charters and covenants are advocated by the Islamic concept of the international relations. The Islamic concept of the international Treaties remains unique in several important aspects. It remains free of any contradiction and emphasizes more strongly on moralization and humanization of the international conduct. It is in common with the prevailing concepts of the international relations, advocates respect for the States' sovereignty and non-intervention in their internal affairs, Islam disallows the apathetic and indifferent

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<sup>1</sup> Rahman, Afzallur, Mohammad as a Military Leader, p.296.



attitudes towards the oppressed people.

It is, therefore, in the interest of world peace that Islamic legal system must take into consideration in the treaties to be adopted. For the establishment of lasting peace in the world it is necessary that international treaties should be based on commitment to justice, observance of optimal morals and encouragement of the international cooperation. It should ensure the international legal and moral responsibility in a manner that helps secure punishment of the aggressor, bring justice to the wronged and present the world's destitute and deprived people with their essential needs.

The Islamic State should observe the prevailing internationally acceptable practices & norms save those, if any, are obviously contradictory to the sound reason. This is a fundamental prerequisite that would ensure orderly international behavior and prevent chaos.

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